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THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Michael B. McGraw et al.) Art Unit: 3762
Serial No.: 09/556,389) Examiner: S. Getzow
Filed: April 24, 2000) Atty. Dkt. No.: 000309.00011
For: PORTABLE MUSCLE STIMULATOR) MCG/DJE:
WITH PULSE WIDTH CONTROL)

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REQUEST FOR REFUND OF FEES PAID

Commissioner for Patents
Washington, D.C. 20231

Sir:

Further to the Notice of Appeal and Request for Three-Month Extension of Time filed October 11, 2001, the Applicants, through undersigned counsel, respectfully request a refund of all fees paid pursuant to those submissions, as those submissions were necessitated through the action of the U.S. Patent and Trademark Office through no fault of the Applicants.

The Final Rejection was dated April 11, 2001, and set a shortened statutory period for response of three months. The sole ground of rejection was that the reissue declaration was unsigned. The Response to Final Rejection, submitting the same reissue declaration with the inventors' signatures, was filed April 17, 2001.

The Applicants' counsel reasonably believed that the Response was fully responsive and would result in a Notice of Allowance. The Examiner evidently thought so as well, since the Applicants' counsel was informed that an allowance was counted on April 30, 2001.

However, a Notice of Allowance was never mailed. Instead, the application was sent to a review process which extended beyond the six-month statutory period for responding to the Final Rejection. The next communication from the USPTO was dated October 18, 2001, which was after the end of the six-month statutory period and more than six months after the date on which the Response to Final Rejection had been filed.

During that period of six months, the Applicants' counsel had made several attempts to learn the status of the review process to which the application had been submitted, although no one to whom they spoke at the USPTO could provide information. Since the Applicants' counsel had no way of knowing the status of the review process, they filed the Notice of Appeal and Request for Three-Month Extension of Time to prevent the application from becoming abandoned. Applicants' counsel did not know and could not have known that a further communication from the USPTO would come only a week after the end of the statutory period for response.

For the reasons set forth above, the Applicants respectfully submit that the payment of government fees on October 11, 2001, was necessitated by action of the USPTO, which the Applicants' counsel had no way of controlling or predicting. Accordingly, the Applicants respectfully submit that they are due a refund of \$460.00 for such fees.

In the event there are any questions relating to this Response or to the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

It is respectfully submitted that no fee is due for this Request. However, the Office is authorized to charge any shortage of fees or credit any overpayment thereof to BLANK ROME COMISKY & McCUALEY LLP, Deposit Account No. 23-2185 (000309-00011). In the event that a

separate Petition for an Extension of Time does not accompany this Amendment, the Applicants herewith petition under 37 C.F.R. §1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized above.

Respectfully submitted,

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